

U.S. Patent Application No. 10/723,376
Attorney Docket No. 356973-991201 (Formerly 2505130-991201)

REMARKS

The Double Patenting Rejection

This rejection has been overcome by Applicant's timely-filed terminal disclaimer, filed herewith.

The Rejections under 35 U.S.C. §§ 102 and 103

Various of Applicant's claims have been rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,687,848 to *Scholz et al.* ("*Scholz*"), U.S. Patent No. 5,941,643 to *Linkiewicz* ("*Linkiewicz*"), and U.S. Patent No. 6,164,826 to *Petkovsek* ("*Petkovsek*"), and under 35 U.S.C. § 103(a) as being unpatentable over various combinations of the above patents, and U.S. Patent No. 3,387,701 to *Schneider et al.* ("*Schneider*"). Applicant respectfully traverses, noting that none of the references discloses every element of the claims as amended. More specifically, none of the references discloses both a reclosable fastener and a pour spout, both of which are along a side edge.

Scholz

With reference to FIG. 12 of *Scholz*, *Scholz* discloses a bag with a magnetic strip 152. Even if the magnetic strip 152 acts as a reclosable fastener, *Scholz* does not disclose a separate pour spout. Accordingly, *Scholz* does not disclose both a reclosable fastener and a pour spout, and thus cannot disclose both a reclosable fastener and a pour spout, where both are located along a side edge.

Linkiewicz

Linkiewicz does not cure the deficiency of *Scholz*. With reference to FIG. 3 of *Linkiewicz*, *Linkiewicz* explicitly defines a "top edge 42" (Col. 4:60) with a zip closure 48 along the top edge 42 (Col. 4:60-67). As the zip closure 48 is along what *Linkiewicz* defines as the top edge 42, *Linkiewicz* cannot disclose a reclosable fastener located along a side edge. The fact that the bag of *Linkiewicz* can be turned on its side is irrelevant – this is still explicitly defined as a top edge.

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Furthermore, Applicant's claims structurally define over any mere turning of the bag. Applicant claims its bags as being configured to rest upon their bottom end, or that its bottom ends are configured to support the bag. From FIG. 2 of *Linkiewicz*, it is clear that the only end that is specifically configured to support the bag is the side with cross seal 37. The end opposite this is the top end 42, and the zip closure 48 is located along this top end, not along a side.

Petkovsek

With reference to FIG. 5, *Petkovsek* discloses a bag with a resealable closure mechanism 141 along inside edges 135, 136, and a pourable spout 112 (Col. 6:36-39). The pourable spout 112 extends out at an angle from the inside edges 135, 136, and thus is not located along a side edge.

Schneider

Schneider does not disclose a reclosable fastener. Also, *Schneider* does not disclose a pour spout located along any of the side edges of its bags.

As above, none of the references discloses both a reclosable fastener and a pour spout that are located along a side edge of a bag. Accordingly, amended claim 1 is patentable over these references for at least the reason that it recites "the pour spout and the reclosable fastener located proximate to and oriented substantially parallel to the first side edge" Likewise, amended claim 13 is patentable over these references for at least the reason that it recites an "opening having a reclosable fastener and a pour spout, wherein the reclosable fastener and the pour spout are further located along the first side edge." The remaining claims depend from one of these claims, and are thus also patentable for at least this same reason.

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CONCLUSION

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

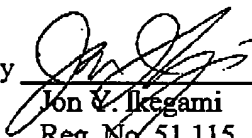
The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896 referencing Attorney Docket No. 356973-991201.

Respectfully submitted,

DLA PIPER US LLP

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By



Jon V. Ikegami
Reg. No. 51,115
Attorney for Applicants

DLA PIPER US LLP
2000 University Avenue
East Palo Alto, CA 94303
Telephone: (650) 833-2104
Facsimile (650) 833-2001